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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 9/2002 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT	Hemala Aayatu, S/o Mukka, Caste Muriya, Aged about 48 years, Resident of Potam Para, Gongalur, Police Station Gangaloor, District Dantewada (CG).
		-Versus-
	RESPONDENT	State of Chhattisgarh
	Appeal under Section 374(2) of the Code of Criminal Procedure, 1973	
	Present: - Smt. Usha Chandrakar, counsel for the appellant. Shri U.N.S. Deo, Addl. Public Prosecutor for the State.	
	DB: - HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ.	
	ORAL JUDGMENT (Delivered on 13th April, 2007)	
	L.C. Bhadoo, J	
	This appeal is directed against the judgment of conviction and order of sentence dated 13-10-2001 passed by Fourth Additional Sessions Judge, Jagdalpur, in Sessions Trial No.281/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 and 323 of the Indian Penal Code, sentenced him to undergo imprisonment for life & to pay a fine of Rs.300/-, in default of payment of fine to further undergo R.I. for three months and to undergo R.I. for four months, respectively.	

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आदेश पत्रक (पूर्वानुबद्ध)

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2) The case of the prosecution, in brief, is that in the night of 8-5-2000 in between 11.00 to 12.00 p.m., deceased Budru and accused Aayatu started quarrelling in connection with liquor. On hearing commotion, Lakmu (PW-1) came on the scene and tried to intervene. The accused attacked him with a knife. In the meantime, he attacked Budru with a knife & club and left the place of occurrence. Deceased Budru died on account of the injuries sustained by him. The matter was reported in the Police Station Gangaloor by Lakmu (PW-1) vide First Information Report Ex.P/2. After registration of the crime, Investigating Officer left for scene of occurrence. He prepared inquest (Ex.P/1) on the body of Budru. The body of Budru was sent for postmortem examination under Ex.P/3 to Primary Health Centre, Bijapur, where Dr. R.L. Gangesh (PW-5) conducted the postmortem and prepared the report (Ex.P/4) in which he opined that the cause of death was internal hemorrhage due to hypovolumic shock. The death was homicidal in nature. The injuries of Lakmu were also examined by Dr. R.L. Gangesh. After examination, he prepared injury report (Ex.P/5). The Investigating Officer prepared the site plan (Ex.P/10). During investigation, while in the police custody, the accused gave memorandum (Ex.P/12), in pursuance of that at his instance knife was seized under Ex.P/13.

3) After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to the Court of Sessions Judge, Jagdalpur, from where learned Additional Sessions Judge, Jagdalpur, received the same on transfer for trial.

4) In order to establish the charge against the accused/appellant, the prosecution examined 8 witnesses. Statement of the accused was recorded

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आदेश पत्रक (पूर्वानुबद्ध)

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under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence.

5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard learned counsel for both the parties and perused the material available on record.

7) Learned counsel appearing for the accused/appellant has not disputed homicidal death of Budru. Moreover, Bogal Lakmu (PW-1), Bogam Aayutu (PW-2) and Hemala Lachhi (PW-4) have categorically stated that the accused attacked the deceased with a knife, as a result of which he died spontaneously. The above evidence is corroborated by the evidence of Dr. R.L. Gangesh (PW-5), who conducted the postmortem on the body of the deceased. He has stated that there were one incised wound and three stab wounds on the chest of the deceased. The cause of death was hemorrhage and shock. He also stated that injuries were sufficient in the ordinary course of nature to cause death. Death was homicidal in nature. In view of the above, it is established that the death of Budru was homicidal in nature.

8) As far as involvement of the accused in the crime in question is concerned, Smt. Chandrakar, learned counsel appearing for the accused/ appellant, argued that the incident took place in between 11.00 to 12.00 p.m. i.e. dark night, therefore, there was no occasion for the witnesses to witness the crime in question. Her further argument is that in fact when accused and deceased started quarrelling in connection with liquor, in that process the deceased sustained injuries, therefore, the offence against the accused/

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आदेश पत्रक (पूर्वानुबद्ध)

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appellant does not travel beyond Section 304 Part II of the Indian Penal Code.

9) On the other hand, Shri Deo, learned Addl. Public Prosecutor, supported the case of the prosecution.

10) In order to appreciate the arguments advanced by learned counsel for the parties, we have perused the evidence. Bogal Lakmu (PW-1) has stated that in the Monday night he was at his residence. Deceased Budru, his brother and accused Aayatu, his brother-in-law, were consuming liquor at the residence of Aayutu. The house of Budru, his house and Aayatu's house are adjoining. When he heard the cries of Budru he went to the house of Aayatu and saw that Aayutu was attacking Budru with knife on his stomach and chest. When he tried to intervene, the accused attacked him also, as a result of which he sustained injuries. In the meantime, Budru fell down on the ground. Thereafter he informed the villagers and lodged the report (Ex.P/2).

11) Bogam Aayutu (PW-2) has also corroborated the above evidence and stated that deceased Budru was his brother and the accused is his brother-in-law. Accused has murdered his brother with knife and club. He assaulted the deceased on his chest. In cross-examination, he has stated that accused attacked the deceased with knife. Deceased also attacked the accused with club.

12) Hemala Lachhi (PW-4), the wife of the accused and sister of the deceased, has stated that the deceased and accused were consuming liquor at her residence and they started quarrelling. During that process, accused attacked Budru with a knife on his chest. She saw the accused attacking her

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आदेश पत्रक (पूर्वानुबद्ध)

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brother Budru with a knife. Accused also threatened her that since you have witnessed the crime, he will murder her also. On this, she ran away.

13) In view of the above evidence of these three witnesses, it is established that the accused attacked the deceased with a knife. It is true that there was night at the time of incident, but Hemala Lachhi (PW-4), wife of the accused and sister of the deceased, has categorically stated that at her residence both accused and deceased were consuming liquor and they started quarrelling. Accused attacked the deceased with a knife. Other witnesses namely, Bogal Lakmu (PW-1), Bogam Aayutu (PW-2), who are the brothers of the deceased, have stated that they reside adjoining to the houses of the accused as well as deceased. Therefore, the accused, deceased and the witnesses are close relatives. They were residing at same place. Accused and deceased were consuming liquor in the house of the accused. Therefore, there is no question that these persons were not able to witness the crime when the accused attacked the deceased. Moreover, the knife in question with which the accused attacked the deceased has been recovered at the instance of the accused. After examination Doctor has stated that the injuries sustained by Budru can be caused by knife in question, therefore, the argument advanced by learned counsel appearing for the accused/appellant is devoid of merit.

14) As far as the question of sudden fight is concerned, Hemala Lachhi (PW-4), the wife of the accused and sister of the deceased, has stated that both of them started quarrelling. There is nothing on record that the accused in any manner sustained any injury. On the contrary, the accused attacked

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	the deceased with a knife. He caused three stab injuries on the chest and one incised wound on the temporal region. 15) In order to take the benefit of exception 4 to Section 300 of the Indian Penal Code, it must be established that the accused has not acted in cruel manner. Apart from other points, looking to the nature of the injuries, that too four injuries on the vital organs of the body, the deceased was armless, it is established that the accused attacked the deceased mercilessly, in a cruel and unusual manner, therefore, the accused is not entitled for the benefit of exception 4 to Section 300 of the Indian Penal Code. 16) For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court convicting the accused for committing offence under Sections 302 and 323 of the Indian Penal Code. 17) In the result, the appeal being devoid of merit deserves to be dismissed and it is hereby dismissed. Sd/- L.C.BHADOO Judge Sd/- DHIRENDRA MISHRA Judge
Gowri		

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